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OFFICE OF THE GENERAL COUNSEL

M E M O R A N D U M

TO: Chief, Dockets Division

FROM: Associate General Counsel, Litigation Division

SUBJECT: Austin, Texas; Dayton, Ohio; Dubuque, Iowa; King County, Washington; Miami Valley Cable Council; Montgomery County, Maryland, St. Louis, Missouri; and Wadsworth, Ohio v. FCC & USA, No. 93-1727 and National Cable Television Association, Inc. v. FCC & USA, No. 93-1729. Filing of two new Petitions for Review in the United States Court of Appeals for the District of Columbia Circuit.

DATE: November 4, 1993

Docket No(s). MM 92-266

File No(s).

This is to advise you that on November 1, 1993, Austin, Texas, et al. and National Cable Television Association, Inc., filed with the United States Court of Appeals for the District of Columbia Circuit:

X Section 402(a) Petitions for Review
___ Section 402(b) Notice of Appeal

of the following FCC decision: In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, 8 FCC Rcd 5631, recon. granted in part and denied in part, FCC 93-428, released August 27, 1993. Petitioners petitions the Court to vacate and set aside the cable rules that regulate the rates that the vast majority of cable television operators may charge their subscribers for basis service, cable programming service and equipment.

Due to a change in the Communications Act, it will not be necessary to notify the parties of this filing.

The Court has docketed these cases as Nos. 93-1727 and 93-1729 and the attorney assigned to handle the litigation of this case is Laurence N. Bourne.


Daniel M. Armstrong

cc: General Counsel
Office of Public Affairs
Shepard's Citations

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CLERK OF THE UNITED
STATES COURT OF APPEALS

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AUSTIN, TEXAS; DAYTON, OHIO;
DUBUQUE, IOWA; KING COUNTY,
WASHINGTON; MIAMI VALLEY
CABLE COUNCIL; MONTGOMERY COUNTY,
MARYLAND; ST. LOUIS, MISSOURI; and
WADSWORTH, OHIO

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION and
UNITED STATES OF AMERICA,

Respondents.

Case No. 93-1727

PETITION FOR REVIEW

Pursuant to 28 U.S.C. §§ 2342 and 2344, Rule 15(a) of the Federal Rules of Appellate Procedure, and 47 U.S.C. § 402(a), the City of Austin, Texas; the City of Dayton, Ohio; the City of Dubuque, Iowa; King County, Washington; the Miami Valley Cable Council; Montgomery County, Maryland; the City of St. Louis, Missouri and the City of Wadsworth, Ohio ("Petitioners"), by their attorneys, hereby petition the Court for review of the Federal Communications Commission's ("FCC") First Order on Reconsideration, Second Report and Order, and Third Further Notice of Proposed Rulemaking, FCC 93-428 in Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket 92-266, released August 27, 1993 and published in the Federal Register on September 2, 1993,

5 Fed. Reg. 46718 (1993) ("Reconsideration Order"). Venue is proper in this Court pursuant to 28 U.S.C. § 2343.

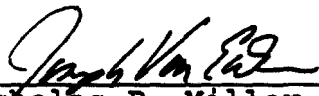
Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, codified at scattered sections of 47 U.S.C., ("1992 Act"), the FCC is responsible for establishing rules to govern the regulation of cable television rates. The FCC is charged with adopting rules that ensure that basic service and equipment rates are reasonable, and that cable programming service and equipment rates are not unreasonable. 47 U.S.C. § 543(b)(1) and (c)(1). The Commission's regulations do not satisfy the mandate of the 1992 Act and are arbitrary and capricious. Moreover, the FCC's regulations are not supported by the record.

In addition, the FCC's rules regarding (1) determination of whether a cable system is subject to effective competition, (2) the effect of existing or future service requirements, (3) the requirement that franchising authorities must demonstrate that franchise fees are not adequate to pay for costs of rate regulation before the FCC will accept jurisdiction over basic service and equipment rates, and (4) the ability of cable operators and franchising authorities to enter into agreements regarding rates, are arbitrary and capricious and are contrary to the 1992 Act and the Cable Communications Policy Act of 1984, codified at 47 U.S.C. § 521 et seq.

Accordingly, Petitioners request that the Court vacate and set aside the FCC's Reconsideration Order.

Respectfully submitted,

By



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November 1, 1993

In the
UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

Nov 2 5 55 PM '93

National Cable Television Association, Inc.)
)
Petitioner,)
)
v.)
)
Federal Communications Commission and)
United States of America,)
)
Respondents.)

OFFICE OF
GENERAL COUNSEL

No. 93-1729

Filed: 11/1/93

PETITION FOR REVIEW

Pursuant to 47 U.S.C. §402(a) and 28 U.S.C. §§2342 and 2344, the National Cable Television Association, Inc. ("NCTA") hereby petitions this Court for review of the Federal Communications Commission's ("FCC" or "Commission") decisions in Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, (Report and Order) FCC 93-177, 58 Fed. Reg. 29,736 (May 21, 1993) and in First Order on Reconsideration, FCC 93-428, released Aug. 27, 1993, 58 Fed. Reg. 46,718 (September 2, 1993).

Copies of the Commission's Report and Order and First Order on Reconsideration are attached to this Petition as Exhibits A and B. Venue in this Court is proper under 28 U.S.C. §2343.

NCTA is the principal trade association of the cable television industry in the United States. Its members

include owners and operators of cable television systems serving over 80 percent of the nation's approximately 56 million cable television households, as well as cable television networks, cable equipment suppliers, and others interested in or affiliated with the cable television industry.

In the Report and Order and First Order on Reconsideration, the Commission adopted comprehensive regulations implementing Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385, 106 Stat. 1460 (1992) (the "1992 Cable Act.") These rules regulate the rates that the vast majority of cable television operators may charge their subscribers for basic service, cable programming service, and equipment.

NCTA participated in the FCC proceedings giving rise to these orders. Its members are aggrieved and injured by the Commission's Report and Order and First Order on Reconsideration insofar as:

- Section 3 and its implementing regulations violate the First and Fifth Amendments of the United States Constitution,
- the Commission's rules implementing Section 3 of the 1992 Cable Act are arbitrary, capricious and otherwise contrary to law, and
- the Commission's rules implementing Section 3 of the 1992 Cable Act exceed the statutory jurisdiction of the Commission.


Petitioner respectfully requests that this Court vacate and set aside the Commission's Report and Order and First

Order on Reconsideration, and grant such other and further relief as may be just and proper.

Respectfully submitted,

NATIONAL CABLE TELEVISION
ASSOCIATION, INC.

By


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November 1, 1993